HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.347 OF 2007

Between:

Sri Laxmi Co. Operative Housing Society
Limited, Hyderabad, represented by its Secretary. . . .Appellant

And

Government of Andhra Pradesh,
represented by its Principal Secretary,
Department of Revenue, Secretariat,
Hyderabad and others. . . .Respondents

:: J U D G M E N T ::

Counsel for the appellants : Sri K.V.Satyanarayana
Senior Advocate assisted by
Sri Y.Rama Rao

6th August, 2007

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Per G.S.SINGHVI, C.J.

This appeal is directed against order dated 18.9.2006 passed by the learned Single Judge in Writ Petition No.6281 of 2005, whereby he rejected the appellant's prayer for quashing Memo No.29862/UC.II (2)/01-9, dated 1.3.2005 issued by Special Chief Secretary to Government, Revenue (UC.II) Department and for issue of a mandamus to the State Government to grant exemption under Section 20 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act') in respect of Ac.16.23 gts. and 115 yards land comprised in Survey Nos.105, 110, 113, 114 and 149/3 of Yousufguda Village, Golconda Mandal, Hyderabad (hereinafter referred to as 'the subject land').

Respondent Nos.5 and 6, who owned the subject land, filed declarations under Section 6 (1) of the Act. By an order dated 7.5.1980, the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad (respondent No.3 herein) decided the surplus area case of respondent Nos.5 and 6 and declared that they were holding 66,173.15 sq. mtrs. of excess land.

During the pendency of the appeal preferred by respondent Nos.5 and 6 against the aforementioned order, the State Government issued G.O.Ms.No.4270, Revenue (U.C.II) Department, dated 10.9.1980 and laid down guidelines for grant of exemption under Section 20 (1)(a) to the vacant land proposed to be transferred by the landholder to the registered cooperative societies. The same was superseded by G.O.Ms.No.136, dated 28.1.1981 and revised guidelines were issued for processing the exemption applications under Section 20(1)(a) of the Act. With a view to take the benefit of the revised policy, respondent Nos.5 and 6 entered into an agreement dated 9.12.1980 with the appellant society for sale of the surplus land. Thereafter, a joint application was filed by respondent Nos.5 and 6 and the appellant for grant of exemption under Section 20 (1)(a) of the Act. Respondent No.3 and the Commissioner of Land Reforms

recommended their case, but the State Government rejected the same vide Memorandum No.699/UC.II/81-7, dated 10.2.1983. Writ Petition No.2658 of 1984 filed by the appellant and respondent Nos.5 and 6 for quashing the decision of the State Government was allowed by the Division Bench on 5.4.1989 in terms of the judgment of another Division Bench in **Katya Co-operative House Building Society Ltd. v. Govt. of A.P.**[1].

Soon after the decision of Writ Petition No.2658 of 1984, the appellant filed Writ Petition No.17409 of 1989 to restrain the respondents from taking possession of the subject land. In the miscellaneous petition (WPMP.No.23059 of 1989) filed by the appellant, the learned Single Judge passed an interim order dated 14.12.1989 and restrained the respondents from interfering with the possession of the subject land or otherwise adversely affecting the right of the appellant or the land-owners i.e. respondent Nos.5 and 6.

While the exemption application filed by the appellant and respondent Nos.5 and 6 was pending re-consideration, the State Government proposed transfer of the subject land to the Andhra Pradesh Housing Development Finance Corporation Ltd. under Section 41 of the Land Acquisition Act, 1894. To this effect, notification was issued by Special Deputy Collector, Land Acquisition (Industries). The same was published in “Deccan Chronicle” (English Edition) dated 21-7-1995. Respondent Nos.5 and 6 challenged the proposed transfer of the subject land in Writ Petition No.16440 of 1995 by contending that during the pendency of the application for exemption, the State Government cannot transfer the land to third party.

By an order dated 26-3-1996, a learned Single Judge disposed of Writ Petition Nos.17409 of 1989 and 16440 of 1995 and directed the Revenue Department to dispose of the application for exemption within one month from the date of receipt of the order with a further direction that the application made by the Andhra Pradesh Housing

Development Finance Corporation Ltd. for allotment of land can be considered only after the decision of exemption application.

In compliance of the directions given by the Division Bench in Writ Petition No.2658 of 1984 and the learned Single Judge in Writ Petition Nos.17409 of 1989 and 16440 of 1995, the State Government issued notice to respondent No.5 and Secretary of the appellant society, gave opportunity of hearing to them on 30th August and 20th September, 1997 and rejected the application for exemption. This was conveyed to respondent No.5 and the appellant society vide Memo No.453/UC.II(1)/84-12, dated 31.10.1997.

The appellant exhibited ignorance about the rejection of the application for exemption vide memo dated 31.10.1997 and made representations dated 26.2.1998, 20.1.2000, 24.3.2003 and 12.3.2004 for disposal thereof and then filed Writ Petition No.5609 of 2004 for issue of a mandamus to the respondents to decide the application for exemption. The learned Single Judge, vide his order dated 25.3.2004, disposed of the writ petition with a direction to the State Government to decide the exemption application within a period of four months and ordained that till then status quo be maintained.

The appellant is shown to have submitted representation dated 6.1.2005 for compliance of the direction contained in order dated 25.3.2004. Thereupon, Special Chief Secretary to Government, Revenue (U.C.II) Department sent memo dated 1.3.2005 to the appellant and counsel for respondent Nos.5 and 6 informing them that the application for exemption had already been rejected vide memo dated 31.10.1997, which was despatched on 11.11.1997.

The appellant challenged the refusal of the government to grant exemption by contending that the same is ultra vires the provisions of Section 20(1)(a) of the Act besides being violative of the judgments of this Court and the Supreme Court. Another plea taken by the appellant was that the impugned proceedings are devoid of reasons and are liable to be quashed on the ground of violation of the rules of

natural justice.

The learned Single Judge noted that the application for exemption had been rejected by the government in 1983 and again in 1997 and held that the decision contained in memo dated 31.10.1997 is not contrary to the orders passed by this Court. The learned Single Judge relied on the judgment of a coordinate Bench in **Sri Sarvaraya Sugars Limited, Chelluru v. Government of A.P.**[2] and negatived the appellant's plea that the rejection of the application for exemption is vitiated due to violation of the rules of natural justice.

Sri K.V. Satyanarayana, learned Senior Counsel appearing for the appellant argued that memo dated 31.10.1997 is liable to be declared as vitiated due to violation of the rules of natural justice because the State Government has not assigned reasons for refusing to exempt the subject land from the operation of the Act. Learned Senior Counsel submitted that even though Section 20(1)(a) does not, in terms, provide for recording of reasons for rejecting an application for exemption, this requirement must be read implicit in the section, else the same would become vulnerable to the attack of violation of Article 14 of the Constitution. Learned Senior Counsel relied on the judgment of the Supreme Court in **Ramchandra Murarilal Bhattad v. State of Maharashtra**[3] and argued that the judgment of the learned Single Judge in **Sri Sarvaraya Sugars Limited, Chelluru v. Government of A.P.** (supra), which has been relied in the order under challenge, does not lay down correct law. He then argued that the appellant did have the locus to file application for exemption and the learned Single Judge committed an error by declining their prayer for quashing the decision contained in memo dated 31.10.1997.

We have thoughtfully considered the entire matter and are convinced that the learned Single Judge did not commit any error by declining the appellant's prayer.

Part IV of the Constitution enumerates the Directive Principles of

State Policy which, though not enforceable by any Court, are fundamental in the governance of the country and it is the duty of the State to keep these principles in view while enacting laws (Article 37). Article 38 (1) ordains that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Clause (2) of Article 38 lays down that the State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals, but also amongst groups of people residing in different areas or engaged in different vocations. Article 39 enjoins upon the State to direct its policy towards securing to every citizen the right to an adequate means of livelihood; ensure that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment … Other Articles of this part do not have any bearing on the decision of these petitions and, therefore, detailed reference to those Articles is being avoided.

With a view to achieve one of the goals set out in Articles 38 and 39 of the Constitution, the Parliament enacted the Urban Land (Ceiling and Regulation) Act, 1976 with the following main objectives:

i) to prevent the concentration of urban property in the hands of few persons and to arrest the speculation and profiteering in the urban property;

ii) to bring about socialization of urban land in urban agglomerations to subserve the common good by ensuring its equitable distribution;

iii) to discourage construction of luxury housing leading to conspicuous consumption of scarce building materials and to ensure equitable distribution and utilization of such materials; and

iv) to secure orderly urbanization.

The Act particularly provides for the following measures:

i) imposition on ceiling on both ownership and possession of vacant land in urban agglomerations. The ceiling would be on the basis of classification of urban agglomeration.

ii) acquisition of the excess vacant urban land by the state governments. The Governments are conferred the powers to dispose of the vacant land to subserve common good;

iii) payment of an amount for acquisition of land in excess, in cash and bonds;

iv) granting exemptions in respect of certain specific categories of vacant land;

v) regulating the transfer of vacant land within the ceiling limit;

vi) regulating the transfer of urban land or construction of future residential buildings; and

vii) restricting the plinth area for the construction of future residential buildings; and

viii) other procedural matters.

Part III of the Act, which deals with ceiling on vacant land, contains 22 sections. Section 3 lays down that except as otherwise provided in the Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which the Act applies. Section 4 enumerates ceiling limits for urban agglomeration falling within categories A, B. C and D specified in Schedule-I. Section 5 provides for taking into consideration of the transfers affected during the period commencing on the appointed date and ending with the commencement of the Act for the purpose of determination of the surplus area. Section 6 (1) requires every person holding vacant land in excess of the ceiling limit at the commencement of the Act to file a statement before the competent authority specifying the location, extent, value and such other particulars as may be prescribed of all vacant land held by him and also specifying the vacant land within the ceiling limit which he desires to retain. Section 7 provides for filing of statement in cases where vacant land is situated within the jurisdiction

of two or more competent authorities. Sections 8 to 10 regulate preparation of draft statement of the vacant land held in excess of the ceiling limit, issue of final statement and acquisition of vacant land in excess of the ceiling limit. Section 11 regulates payment of amount for the vacant land acquired by the State Government by virtue of deeming provision contained in Section 10 (3) of the Act. Section 12 provides for constitution of Urban Land Tribunal for hearing appeals against the orders of the Special Officer and Section 13 provides for second appeal to the High Court. Section 14 prescribes the mode of payment of amount in terms of Section 11. Section 15 prescribes ceiling limit on future acquisition by inheritance, bequest or by sale in execution of decrees etc. Section 16 requires certain persons to file statements when the Act is adopted subsequently. Section 17 confers power on the competent authority or any person acting under the orders of the competent authority to enter upon any vacant land or building. Section 18 provides for penalty for concealment etc. of the particulars of vacant land. Section 19 (1) lays down that the provisions of Chapter III shall not apply to vacant land held by Central Government etc. Section 20 confers power upon the State Government to grant exemption from the provisions of Chapter III. Section 21, which begins with a non-obstante clause, enumerates certain situations in which excess vacant land is not to be treated as excess. Section 22 provides for retention of vacant land in certain circumstances. Section 23 regulates disposal of vacant land acquired under the Act. Section 24 contains special provisions for disposal of vacant land in favour of certain persons.

Section 20, which empowers the Government to exempt the particular piece of land from the provisions of Chapter III of the Act, reads as under:

> "**20. Power to exempt:**
>
> 1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter –
>
> a) where any person holds vacant land in excess of the

ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter:

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under clause (a) or clause (b) of sub-sec.(1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly."

If the above reproduced provisions are read in conjunction with other provisions of Chapter III including Sections 6, 8 and 10, it becomes clear that the exemption envisaged under Section 20 (1)(b) is in the nature of a concession which the State Government can give to a person whose land is declared surplus. The exercise of power to grant exemption under Section 20 (1)(b) is hedged with the condition that the State Government must feel satisfied that the application of the provisions of Chapter III would cause undue hardship to the applicant. This necessarily means that State Government cannot grant exemption under Section 20 (1)(b) merely for asking. In each case, the applicant has to produce sufficient evidence to convince the State Government that application of the provisions of

Chapter III will cause undue hardship to him.

In **S. Vasudeva v. State of Karnataka**[4], a Division Bench of the Supreme Court interpreted Section 20 (1)(a) and (b) of the Act. P.B. Sawant and N.P.Singh, JJ, who constituted the Bench recorded separate opinions. P.B.Sawant, J expressed his views in the following words:

> "It would be apparent from clause (*a*) of sub-section (1) of the section that under it, the State Government is given power to exempt the excess vacant land from the operation of Chapter III only if the State Government is satisfied that having regard to (*i*) the location of the land and (*ii*) the purpose for which it is being or is proposed to be used, it is necessary or expedient in the public interest to exempt it. The paramount consideration is the public interest. The exemption granted under this provision may be subject to certain conditions. But, it does not appear that it is obligatory to impose such conditions. Nor is it necessary to record reasons when exemption is granted under this clause.
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> The power to exempt such land under clause (*b*) of sub-section (1) can be exercised by the State Government, if it is satisfied that the application of Chapter III would cause undue hardship to the landholder. The exemption may be granted under this clause subject to such conditions, if any, as may be specified in the order. But, unlike under clause (a), there is no obligation to prescribe the conditions. The permission given under this clause, however, has to be supported by reasons to be recorded in writing.
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> Sub-section (2) of the section enables the Government to withdraw the exemption granted either under clause (a) or (b), if it is satisfied that any of the conditions subject to which the exemption is given, is not complied with. Clauses (a) and (b) of sub-section (1) read with sub-section (2) make it clear that the exemption may either be conditional or absolute. Where it is conditional, it may be withdrawn, if any of the conditions are not complied with. The very fact, however, that the legislature has contemplated imposition of conditions on exemptions granted under both the clauses, shows that the purpose of the exemption under either of the clauses cannot be the transfer of the land. The exemption under clause (a) is obviously for the land being put to a particular use which use is also necessary or expedient in the public interest, while exemption under clause (b) is for relieving the person concerned from any undue hardship which may be caused to him personally, by the withdrawal of the excess

land from his possession probably such as when the person may require the land for the expansion of the use to which he has already put it, such as his growing business or activities or to accommodate his growing family. The clause unfortunately is completely silent on what it intends to convey by the expression 'undue hardship'.

* * *

The examination of the aforesaid relevant provisions of the Act shows a clear intention of the legislature and reveals a definite scheme. It has to be admitted that the provisions of the Act as are drafted have not succeeded in translating into words the clear intention of the legislature and to that extent the Act is an inelegant and confused piece of drafting. However, since the intention is clear, a harmonious reading of all the provisions consistent with that intention is necessary to interpret and understand each of the said provisions. The intention of the legislature is to acquire all vacant land in excess of the ceiling limit prescribed by the Act and the main purpose of the Act, as stated earlier, is threefold, viz., (i) to prevent concentration of the urban land in the hands of a few persons and to prevent speculation and profiteering therein; (ii) to distribute the urban land equitably and (iii) to regulate the construction of buildings on the urban lands. Consistent with these objectives, the Act provides for acquisition of all urban vacant land in excess of the ceiling limit and prohibits its transfer in any form absolutely. All that the Act permits in the case of such excess vacant land is either express exemption from the operation of Sections 3 to 19 of Chapter III of the Act by the State Government under Section 20 or non-declaration of such land as an excess vacant land by the competent authority under Section 21 or the retention of such land with the landholder to be permitted by the competent authority under Section 22 of the Act.

The effect of exemption of the land from the provisions of Sections 3 to 19 or of the non-declaration of the land as excess land or of the retention of the land with the landholder under Sections 20, 21 and 22 respectively, is not to permit the landholder to deal with it as he likes including to transfer it. In fact, the exemption, the non-declaration and the retention permitted, is on certain conditions which are required to be prescribed by the State Government or the competent authority as the case may be. If those conditions are not complied with or are contravened, the State Government or the competent authority is given power to withdraw the exemption or to declare the land as excess. This power given to the State Government and the competent authority itself negatives either

power to permit the transfer of the right to transfer. What is more, Chapter IV which alone makes provisions for transfer and use of urban property, makes provision for transfer of vacant land within the ceiling limit subject to certain conditions. It also makes provisions for the transfer of land in excess of the ceiling limit with a building thereon or with a portion of such building. It makes, however, no provision for transfer of land in excess of the ceiling limit without a building or a portion of a building thereon. That is consistent with the object of the Act since the Act does not contemplate transfer of the vacant land in excess of the ceiling limit. It only provides for exemption of such land from being acquired and vested in the State Government or for non-declaration of it as an excess land or for the retention of the same with the holder and that too subject to certain conditions which may be prescribed, as stated earlier.

* * *

The first question that arises is whether the provisions of Section 20(1)(b) permit the State Government to permit the sale of the excess vacant land to a third party. According to us, the answer has to be in the negative for reasons more than one.

In the first instance, the central object of the Act, as is evident both from the preamble as well as the statement of objects and reasons, is to acquire vacant land in excess of the ceiling area and to prevent speculation and profiteering in the same and also to distribute the land equitably to subserve the common good. It is, therefore, per se against the said object to permit the sale of the excess vacant land for whatever reasons, including the undue hardship of the landholder. To construe the provisions of Section 20(1)(*b*) so as to read in them the conferment of such power on the State Government for whatever reasons, is to distort and defeat the whole purpose of the legislation. Further, neither the plain language of the clause nor its context and intendment merit such construction. Section 20 itself is titled 'Power to exempt'. The power given to the State Governments under the section is only to exempt certain excess vacant lands from the operation of the provisions of Sections 3 to 19 of Chapter III, none of which refers to the subject of transfer or restrictions on transfer. Those provisions relate to the calculation, declaration, acquisition and vesting of the excess vacant land. It is Chapter IV which relates to the transfers of vacant lands and the restrictions thereon. Further, from the scheme of the Act, it is evident that the transfers of the vacant land were to be regulated by the specific provisions made in it. They were not to be left to be governed by the unguided discretion of any authority including the State

Government. The specific provisions for regulating the transfer have been incorporated in Sections 26 to 28 of the Act. Those provisions permit transfer of only vacant lands within the ceiling limit but without buildings, and of vacant lands in excess of the ceiling limit but with buildings thereon and subject to the conditions laid down there. It cannot be suggested that in defiance of the said provisions, Section 20(1)(b) vests power in the State Government to sanction sales of excess vacant lands with or without building thereon. Under Section 20(1)(b), the State Government can only exempt such excess vacant land from being acquired by it. The Government cannot permit its transfer when the Act does not even by implication authorise it to do so but permits the transfer subject only to the conditions prescribed by Section 27. The legislature cannot be presumed to have prescribed different conditions for transfer of the same or similar lands.

* * *

Fourthly, the exemption which is granted under Section 20(1)(b) has to be supported by reasons to be recorded in writing. This requirement also contemplates an exemption which is related to and prompted by the use or better use of the land. If it is the financial hardship which was under the contemplation of the legislature, there was nothing easier than to make a reference to the same in clause (*b*) itself and to lay down guidelines for the inquiry into such hardship.

* * *

Lastly, if the power to exempt the land for sale is read in Section 20(1)(b) with such conditions as the State Government may choose to place and if either the State Government chooses not to place any conditions or to place such conditions as are inconsistent with the provisions of Sections 29 and 30, it would create two sets of lands — one where no restrictions are applicable to the construction thereon or only such restrictions as the State Government may choose to impose, and the other where the restrictions on constructions as provided by Sections 29 and 30 would be applicable.

It is, therefore, more than clear that the provisions of Section 20(1)(b) do not permit the State Government to exempt vacant land in excess of the ceiling limit for the purposes of transfer."

(emphasis supplied)

In his concurring opinion, N.P. Singh, J observed as under:

"I agree with brother Sawant, J. that it is not possible to hold that

State Government can grant exemption under Section 20(1) (b) of the Act, to the holder of the excess vacant land, so that he may transfer the same in the manner he desires. The object of the Act being imposition of ceiling on vacant land in urban agglomerations and for acquisition of such land in excess of ceiling limit, with a view to prevent the concentration of urban land in the hands of a few persons, speculations and profiteering therein, will that object be not defeated if it is held that power under Section 20(1) of the Act can be exercised by the State Government to exempt the excess vacant lands from the application of Chapter III of the Act, so that the holder thereof can transfer such lands? Sub-section (1) of Section 20 is in two parts. The exemption under clause (*a*) of the said sub-section is to be granted in the public interest whereas under clause (*b*) the exemption is to be granted taking into consideration the 'undue hardship' of the holder of the land in excess of the ceiling limit. Both the expressions 'public interest' and 'undue hardship' are comprehensive in nature. But at the same time, it is not easy even for courts to say as to whether under different circumstances the exemption was in the 'public interest' or was necessary in the interest of the holder of the land because of his 'undue hardship'.

Under Indian conditions the expression 'undue hardship' is normally related to economic hardship. That is why from time to time many holders of lands in excess of the ceiling limit, while claiming exemption under clause (*b*) put forth their bad economic condition and indebtedness to claim exemption along with permission to sell such excess lands. In the modern set-up many holders of such excess lands having undertaken commercial or industrial ventures with the help of the loans from the banks and other financial institutions, put the plea of repayment of such loans as undue hardship for claiming exemption under clause (*b*) of Section 20(1) aforesaid. How the holders of excess lands having incurred losses or having failed to discharge their debts can claim exemption on the ground of 'undue hardship' in such a situation? Section 4 while fixing the ceiling limit, under sub-section (3) takes note of the fact that 'where in respect of any vacant land any scheme for group housing has been sanctioned by an authority competent in this behalf immediately before the commencement of this Act, then, the person holding such vacant land at such commencement shall be entitled to continue to hold such land for the purpose of group housing'. But at the same time under sub-section (4) of Section 4 it has been specified that 'if on or after the 17th day of February, 1975, but before the appointed day, any person has made any transfer by way of sale,

mortgage, gift, lease or otherwise (other than a bona fide sale under a registered deed for valuable consideration) of any vacant land held by him and situated in such State to any other person, whether or not for consideration, then, for the purposes of calculating the extent of vacant land held by such person the land so transferred shall be taken into account, without prejudice to the rights or interests of the transferee in the land so transferred'. Similarly in Section 5 it has been provided that 'where any person who had held vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person'. When different provisions take into consideration the lands already transferred by the holder, (*i*) between the period February 17, 1975 and the appointed day; (*ii*) as well as between the period commencing from the appointed day and ending with the commencement of the Act, it should not be easily inferred that the framers of the Act desired that after the commencement of the Act while exercising the power of exemption under Section 20(1)(*b*) permission should be granted to holders of such excess lands to transfer such lands to third parties in order to meet their financial liabilities."

The aforementioned judgment was over-ruled by a three Judges Bench in **P.R. Thandur v. Union of India**[5] and the following propositions were laid down:

"1) Clause (a) of sub-section (1) of Section 20 empowers the State Government to grant the exemption if it is satisfied having regard to the relevant factors specified in the clause that it is necessary or expedient to grant the exemption in the "public interest", subject to the conditions specified in the order. Clause (a) specifies certain relevant factors for the purpose of grant of exemption, namely, "location of such land", "the purpose for which such land is being or is proposed to be used" and such other relevant factors as the circumstances of the case may require. Apart from the location of the excess vacant land and the purpose of its use, regard must be had to the other relevant factors, which is a question of fact in each case. However, these factors must indicate that the grant of exemption under clause (a) is necessary or expedient in the "public interest". The expression "public interest" has a legal connotation.

The broad guidelines for grant of exemption under clause (a) are enacted in the provision. A safeguard is provided by requiring conditions to be specified in the order subject to which the exemption is granted under clause (a). Even though there is no proviso in clause (a) of the kind enacted thereafter in clause (b), yet the absence of such a proviso is inconsequential since the requirement of the expressly enacted proviso in clause (b) is implicit in the manner of exercise of the power under clause (a). The requirement in clause (a) of making an order having regard to the specified relevant circumstances and specifying the conditions attached to the exemption, ensures that the decision is reached for cogent reasons which are placed on record in writing culminating in the making of the written order. There is no scope for the view that exemption can be granted under clause (a) by an order specifying the conditions having regard to the specified relevant factors without recording the reasons for doing so in writing. Every State action must satisfy the rule of non-arbitrariness and, therefore, recording of reasons in writing for granting the exemption under clause (a) indicating that it is necessary or expedient in the public interest so to do, is an essential requirement of valid exercise of power under clause (a). This is how clause (a) must be construed and understood.

2) In clause (b) of Section 20 (1), the power of the State Government to grant the exemption depends on its satisfaction "that the application of the provisions of this Chapter would cause undue hardship to such person". It is obvious that the undue hardship must be a direct consequence of the application of the provisions in Chapter III which provides for the restriction on the entitlement to hold any vacant land in excess of the ceiling limit prescribed and further prohibits the transfer of the excess vacant land which vests in the State Government in the manner provided in Section 10 and the owner is entitled only to the amount specified in Section 11 of the Act. It is clear that the "undue hardship" caused to the owner must be the direct consequence of the provisions contained in Chapter III of the Act which disentitles the owner to hold any vacant land in excess of the prescribed ceiling limit and entitles him only to the amount payable under Section 11 of the Act. It is also clear that the expression "undue hardship" indicates that the extent of hardship must be 'undue' and not merely any hardship which is bound to result from the application of the provisions of Chapter III of the Act. The direct consequence of the application of the provisions of Chapter III is economic in nature because of the compulsory acquisition of the

excess vacant land in lieu of the amount payable under Section 11, apart from deprivation of the benefit of the use of the acquired land. In such a situation, even though mere economic loss could not be intended to fall within the expression "undue hardship", yet the expression cannot be construed to exclude every adverse economic impact even if it be so great on that person as to amount to "undue hardship" to him. This would, however, be a question of fact in each case and unless the impact of economic hardship caused to the owner is so great as to amount to "undue hardship" resulting from the application of the provisions of Chapter III of the Act, it would not fall within the ambit of clause (*b*). It appears that the enactment of the proviso in clause (b) is to emphasise the requirement that there must be strong reasons recorded in writing to justify the satisfaction of the State Government that the hardship caused by the application of the provisions of Chapter III to such person amounts to "undue hardship" so that the grant of exemption is judicious, and in case of a challenge can be judicially tested. Suppose the owner has to repay bona fide outstanding dues under earlier decrees of competent courts and admittedly he has no other means of satisfying those decrees out of the amount payable under Section 11. It may be possible to grant exemption under clause (b) on the ground of undue hardship to enable him to satisfy the decrees. This is only illustrative. In cases of exemption granted under clause (b), the possible misuse of the exemption can be checked by imposition of suitable conditions attached to the exemption and the State Government's power under sub-section (2) to withdraw the exemption in case of breach of any condition is a further safeguard in this behalf.

3) Cases falling under clause (b) for grant of exemption may be rare, but it cannot be said that the enactment of clause (b) is an exercise in futility which does not permit grant of exemption in any case of undue hardship with permission also to transfer. Whether there is undue hardship of the kind envisaged therein, is a question of fact in each case. The entire provision in clause (b) has to be given full effect and in a case falling within the ambit of clause (b), the effect of the order of exemption is to exempt such vacant land from the provisions of Chapter III and, therefore, also from the restriction on transfer of such land. To hold that any land exempted under clause (b) cannot be transferred irrespective of the conditions of the exemption is to rewrite the provision which enacts that, subject to the conditions specified in the order of exemption, such vacant land would be exempt from the provisions of Chapter III, which means the exemption is also from provisions prohibiting transfer enacted in

Chapter III. It is clear that any case which can legitimately fall within clause (b) would be outside the ambit of clause (a), and clause (b) is restricted in its application. Whether a case falls within the ambit of clause (b) is again a question of fact and if any dispute arises it will have to be tested judicially on the facts of that case. Similarly, the validity of the exercise of power of exemption under clause (b) would also depend on the facts of each case as it would in respect of clause (a)."

(underlining is ours)

A somewhat similar question was considered in **Agastyar Trust v. Commr. & Secy. to Govt. Revenue Department**[6]. The three Judges Bench of the Supreme Court interpreted Sections 27 and 29 of Tamil Nadu Urban Land Tax Act, 1966, which provide for exemption from payment of land tax. Speaking for the Bench, Dr. AR. Lakshmanan, J. noted the distinction between the automatic exemption contemplated under Section 29 and power vested in the State Government to grant exemption under Section 27 and observed:

"While under Section 29, the exemption is granted by the statute itself and is automatic in respect of the urban lands owned by the authorities or institutions referred to therein, the exemption under Section 27 is not so. For exemption under Section 27, power is vested with the State Government to exempt the lands or persons from payment of tax "if the Government is satisfied that the payment of urban land tax … would cause undue hardship". Such power can be exercised by the Government only on specific application by the person or institution seeking exemption and on placing satisfactory material for exercise of such power. The exemption under Section 27 is not a matter of right and does not follow as a matter of course."

(emphasis added)

The ratio of the above noted judgments is that exemption envisaged under Section 20 (1)(b) is in the nature of concession and cannot be claimed as of right and that before granting exemption, the State has to satisfy itself that application of the provisions of Chapter III would cause undue hardship to the applicant.

We shall now consider whether the power exercisable by the State Government under Section 20(1)(b) is quasi-judicial or purely administrative and whether the State Government is required to record reasons for refusing to accept the prayer for grant of exemption. In this context, it is necessary to observe that while determining an application filed for grant of exemption, the State Government does not decide any lis between the parties. As a matter of fact, the power to grant exemption under Section 20 (1)(b) is a contrast to the power of adjudication. Since the provision contained in Section 20 (1) (b) is in the nature of a concession, the only thing required to be considered by the State Government for deciding an application made under that section is whether the applicant would suffer undue hardship on account of application of Chapter III. This exercise does not involve any adjudication of the rights of the applicant and, by no stretch of imagination, rejection of an application for exemption can be treated as an order adversely affecting vested right of the applicant or visiting him with civil consequences. Therefore, while deciding an application filed for exemption under Section 20 (1)(b), the State Government cannot be said to be discharging quasi-judicial functions.

If proviso to Section 20 (1) (b) is interpreted in the above backdrop, it becomes clear that reasons are required to be recorded by the State Government only if it chooses to grant exemption and not otherwise. In other words, the State Government is not required to record reasons for refusing to grant exemption. The object underlying this proviso is to ensure that the power to grant exemption is not to exercise arbitrarily, or for ulterior purpose or as a measure of favourtism, else, the very purpose of the legislation would get defeated.

In **Sri Sarvaraya Sugars Limited, Chelluru v. Government of A.P.** (supra), the learned Single Judge relied on the observations made by the Constitution Bench of the Supreme Court in **S.N. Mukherjee v. Union of India** (supra) and **Union of India v. E.G.**

Nambudiri[7] and held as under:

> "In the system of governmental functioning where before passing an order the matter is generally considered at various levels, the reasons and opinions contained in the file at various levels would be sufficient compliance with a rule that every executive action must be supported by reasons to warrant an inference that an application was dealt with in a fair and proper manner. Applying this test, i am satisfied that the impugned order is well supported by reasons and it cannot be rejected as without reasons.
>
> In the system of governmental functioning where before passing an order the matter is generally considered at various levels, the reasons and opinions contained in the file at various levels would be sufficient compliance with a rule that every executive action must be supported by reasons to warrant an inference that an application was dealt with in a fair and proper manner. Applying this test, i am satisfied that the impugned order is well supported by reasons and it cannot be rejected as without reasons."

We respectfully record our approval to the view expressed by the learned Single Judge and hold that the decision of the State Government not to exempt the subject land from the operation of the Act cannot be declared illegal on the ground of lack of reasons or on the ground that the same is ultra vires the proviso to Section 20(1) of the Act.

The judgment of the Supreme Court in **Ramchandra Murarilal Bhattad v. State of Maharashtra** (supra), on which reliance has been placed by Sri K.V. Satyanarayana, does not, in any manner, support the cause of the appellant. Rather, it supports the view taken by us that the State Government is not required to record reasons while rejecting an application for exemption. The issue, which fell for consideration before the Supreme Court was whether the government was required to record reasons for rejecting the highest bid given for award of contract. Their Lordships of the Supreme Court held that reasons are required to be assigned in a case where civil or evil consequences may ensue, but the same are not necessary where it is contractual in nature.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.657 of 2007 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, C.J.

6th August, 2007

C.V.NAGARJUNA REDDY, J.

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[1] 1984 (2) ALT 248 = 1984 II APLJ 158
[2] 2003 (5) ALD 347
[3] (2007) 2 SCC 588
[4] (1993) 3 SCC 467
[5] (1996) 3 SCC 690
[6] (2005) 3 SCC 516
[7] AIR 1991 SC 1216